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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Report of the Secretary-General on the Khmer Rouge trials**

Summary

In its resolution 57/228 B of 13 May 2003, the General Assembly requested the Secretary-General to report to the Assembly at its fifty-eighth session on the implementation of that resolution. In his reports on the Khmer Rouge trials of 3 December 2003 (A/58/617), 12 October 2004 (A/59/432), 29 November 2004 (A/59/432/Add.1) and 25 November 2005 (A/60/565), the Secretary-General provided information on the progress achieved towards establishing the Extraordinary Chambers for the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea.

The present report provides details on the progress achieved by the Extraordinary Chambers since the above-mentioned reports.

* A/62/150.

** The submission of the present report was delayed to permit extensive consultations with various departments.

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I. Introduction

1. Since the issuance of my reports on the Khmer Rouge trials of 12 October 2004 (A/59/432) and 25 November 2005 (A/60/565), the Extraordinary Chambers in the courts of Cambodia have achieved substantial progress in many areas. During the reporting period, the offices of the Co-Prosecutors and Co-Investigating Judges were opened, the Defence Support Section was established, investigative work commenced, the courts' internal rules were adopted and the co-prosecutors submitted their first introductory submission. However, the unique structure of the Extraordinary Chambers presents challenges in both the administrative and judicial aspects of the court. In addition, significant shortfalls in staffing and the budget have been identified and will need to be addressed quickly in order for the Extraordinary Chambers to meet their mandate.

II. Establishment of the Office of Administration

2. In paragraph 6 of my report of 25 November 2005 (A/60/565), it was noted that I had appointed the Deputy Director of the Office of Administration. Furthermore, in accordance with paragraph 3, article 8, of the Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea, the Royal Government of Cambodia appointed the Director and Reserve Director of the Office of Administration by Royal Decree No. NS/RKT/1105/462 of 12 November 2005 and assigned the Deputy Director of the Office of Administration by Royal Degree No. NS/RKT/1105/466 of 12 November 2005.

3. A start-up assessment mission, led by the Deputy Director of the Office of Administration, visited Phnom Penh from 6 to 16 December 2005. Meetings were held between the mission and the task force, during which drafts were finalized of the two supplementary agreements on safety and security, and on utilities, facilities and services referred to in articles 14 and 17 (b), and (e) of the Agreement. The drafts were subsequently signed by the Secretary of State of the Ministry of the Interior of the Royal Government of Cambodia and the Director and the Deputy Director of the Office of Administration on 14 March 2006.

Challenges of the hybrid system

4. The Office of Administration is a hybrid system, with separate administrative rules and regulations. The Director of the Office reports to the Government of Cambodia, while the Deputy Director, as a United Nations staff member, reports to the Secretary-General. As I noted in my report of 25 November 2005 (A/60/565, para. 3), the budget of the Extraordinary Chambers is divided between the share of the United Nations of $43 million, to be financed through voluntary contributions from Member States, and that of $13.3 million borne by the Government of Cambodia, financed through both government resources and voluntary contributions. The Royal Government of Cambodia has also committed to provide in-kind contributions covering the cost of premises, security, detention facilities, outreach, utilities and medical support. The United Nations share of the budget is administered in conformity with the Financial Regulations and Rules of the United Nations. Similarly, international personnel are recruited under and are subject to the

United Nations Staff Rules and Regulations. With the exception of funds channelled through a trust fund project of the United Nations Development Programme, the Cambodian share of the budget and the personnel appointed by the Royal Government of Cambodia are subject to the applicable Cambodian laws.

5. The hybrid system has posed many challenges and difficulties in the implementation of an integrated administrative structure to support the judicial process, especially in those sections in which staff members who work under the daily supervision of international chiefs have reporting lines outside of their sections, and vice versa. In order to address such challenges and difficulties, the Secretariat appointed two experts who visited Phnom Penh from 14 May to 1 June 2007 in order to ascertain the state of preparedness of the administrative structures and to identify measures that the United Nations could take to ensure that adequate systems and facilities are put in place to enable the successful conduct of judicial proceedings.

6. In their assessment report, the experts identified a number of issues relating to the hybrid nature of the Office of Administration and highlighted the lack of capacity in certain areas of the Office of Administration, most notably in the Court Management Section. The experts also highlighted the inadequacy of the current budget and staff resources and recommended a comprehensive review, taking into account the revised judicial infrastructure and other new requirements arising from the adoption of the internal rules.

7. Among the most serious issues raised in the report was the inability to translate the thousands of pages of technical documents into three languages within the current capacity and the inability of the Court Management Section to process the case files that have just been put before the co-investigating judges. A concerted effort has been made to study and implement the recommendations made by the experts, in cooperation with the Director and Deputy Director of the Office of Administration, including the temporary assignment of external experts and international staff to provide the targeted technical assistance in the above areas.

Contacts with the diplomatic community

8. In order to engage in regular dialogue with Member States on issues related to the Extraordinary Chambers, the Director and Deputy Director of the Office of Administration liaise on a regular basis with the diplomatic community in Phnom Penh. Furthermore, at the suggestion of the Deputy Prime Minister of the Royal Government of Cambodia, donor countries and other interested States have created an informal group known as the Friends of the Extraordinary Chambers in the Courts of Cambodia, which meets with the Director and Deputy Director of the Office of Administration from time to time to discuss the ongoing process and to offer non-judicial advice and assistance. The first of such meetings was held in June 2006, and it was agreed that they would continue on a bimonthly basis, hosted alternately by the embassies of Japan and France. The meetings have proved to be a useful forum for informal consultations and information-sharing between the Extraordinary Chambers and the diplomatic community.

9. The Deputy Director of the Office of Administration, in her capacity as the Coordinator of the United Nations Assistance to the Khmer Rouge trials, has also been welcomed into the United Nations country team in Cambodia and attends its

monthly coordination meetings to ensure that the United Nations system provides a coordinated approach to the issue of the Khmer Rouge trials.

Contacts with the non-governmental organization community

10. As I noted in paragraph 12 of my report of 12 October 2004 (A/59/432), the establishment of the Extraordinary Chambers has generated considerable interest from non-governmental organizations (NGOs) and civil society groups. During the reporting period, court officials have made every effort to provide timely, accurate and complete information to interested organizations and seek out cooperative agreements of mutual benefit wherever possible. This policy has been successful in a number of areas. For example, the Documentation Centre of Cambodia has provided research material for the co-prosecutors and has brought over 5,000 rural Cambodians to visit the court facilities; the Cambodian Society for Democracy and the Open Forum of Cambodia have organized and promoted provincial public forums with the Extraordinary Chambers; the Open Society Justice Initiative coordinates a monthly NGO/Extraordinary Chambers information-sharing session; the Khmer Institute for Democracy has worked with the Extraordinary Chambers in the production of an educational film and print publications; and both the Cambodian Human Rights and Development Association and the Transcultural Psychosocial Organization Cambodia are working closely with the witness support office of the Extraordinary Chambers.

11. Despite the good cooperation received in many areas, suspicions of governmental interference in the judicial process and allegations of corruption have been raised by members of the NGO community, resulting in guarded support. To counter this view, every effort is being made to ensure that the work of the court is transparent and that court officials take part in open dialogue with the NGO community so that the latter consider themselves to be true partners in the success of the court.

Public outreach activities

12. As I noted in paragraph 22 of my report of 12 October 2004 (A/59/432), the concept of operations of the Extraordinary Chambers includes public information and outreach as an integral part of the court's work. During the reporting period, the Public Affairs Section of the Extraordinary Chambers has made extensive efforts to ensure that the Cambodian population is informed about the judicial process. The Public Affairs Section has taken part in public forums held in eight city centres in Cambodia, each targeting three provinces. Support from the judicial side of the court for those activities has been excellent, with at least one official from the court chambers or the Defence Support Section present to talk to the audience and answer questions from the public. The forums have been well received and well attended by both the general public and civil society groups. Additional personnel dedicated to outreach in the coming year will enable the Public Affairs Section to expand this programme and ensure that the rural population remains both aware of the court and supportive of its mandate.

13. During the reporting period, the Public Affairs Section developed a common theme and slogan for its outreach material. The phrase "Moving forward through justice" is now included on all outreach material and is becoming recognized across Cambodia. Over the past 12 months, the Public Affairs Section has produced and

distributed 100,000 copies of an information booklet entitled, "*An introduction to the Khmer Rouge trials*", as well as 25,000 posters and 30,000 bumper stickers to raise public awareness. The websites of the United Nations Assistance to the Khmer Rouge Trials and the Extraordinary Chambers were also set up in the first year and have shown a significant rise in hits each month. Finally, a series of short radio spots were completed and distributed to all Cambodian media stations. The radio spots are now being aired frequently in support of call-in shows and drama and news programmes that focus on the Khmer Rouge trials.

14. Interest in the work of the court is expected to grow exponentially as the process moves forward, placing even greater pressure on the work of the Public Affairs Section. Within the limits of its staff and budget, the Section continues to make every effort to supplement its work by supporting the efforts of the local media and civil society groups to educate the public about the work of the court. However, additional staff and funding are needed to increase the variety and quantity of official information products distributed so as to ensure that public and civil society information needs are met.

Security and safety

15. In accordance with the supplementary agreement concerning security and safety, the security responsibilities of the United Nations include the establishment and direction of security arrangements within the premises and arrangements for close protection, as necessary, for international personnel. In addition, the Organization's security responsibilities include ensuring compliance by all international personnel with the terms of the supplementary agreement and with the security policies and procedures established and issued by it. The Chief, Security and Safety was appointed in June 2007. The development and implementation of security arrangements within the premises has progressed to include the recruitment of security staff; security risk assessments of the premises of the Extraordinary Chambers and the identification of personnel under possible threat; access plans; and screening facilities. In addition, close protection arrangements for the international co-investigating judge and international co-prosecutor are fully operational.

16. Efforts to coordinate with the Ministry of the Interior have increased and have led to closer working relations and information-sharing, which in turn have resulted in a more robust security mechanism for international staff members. The Chief, Security and Safety also attends the monthly meeting of the United Nations country security management team as an observer and coordinates security matters with the designated official as they pertain to any security impact on the United Nations community within Cambodia resulting from the work of the Khmer Rouge trials.

III. Appointment of the judges and prosecutors

17. As noted in paragraph 11 of my report of 25 November 2005 (A/60/565) on 30 June 2005, letters were addressed on my behalf to all States asking them to suggest the names of individuals who might be nominated as judges of the Extraordinary Chambers, judges of the Pre-Trial Chamber and as Co-Investigating Judge and Co-Prosecutor in accordance with articles 3, 5, 6 and 7 of the Agreement. On 6 March 2006, I communicated to the Royal Government of Cambodia the

nominations of. Silvia Cartwright (New Zealand), Claudia Fenz (Austria), Chandra Nihal Jayasinghe (Sri Lanka), Martin Karopkin (United States of America), Agnieszka Klonowiecka-Milart (Poland), Jean-Marc Lavergne (France) and Motoo Noguchi (Japan) as international judges for the Extraordinary Chambers; Marcel Lemonde (France) as international Co-Investigating Judge; Paul Coffey (United States of America) and Robert Petit (Canada) as international Co-Prosecutors; and Rowan Downing (Australia) and Katinka Lahuis as international judges for the Pre-Trial Chamber.

18. On 4 May 2006, the Supreme Council of the Magistracy of Cambodia selected and appointed international and Cambodian judges, co-investigating judges and co-prosecutors for the Extraordinary Chambers. Among the international judges, Ms. Cartwright and Mr. Lavergne were appointed to the Trial Chamber, with Ms. Fenz acting as reserve, while Mr. Noguchi, Ms. Klonowiecka-Milart and Mr. Jayasinghe were appointed to the Supreme Court, with Mr. Karopkin as reserve. Ms. Lahuis and Mr. Downing were appointed to the Pre-Trial Chamber. Mr. Lemonde was appointed as the international Co-Investigating Judge and Mr. Petit as international Co-Prosecutor, with Mr. Coffey acting as reserve.

19. The Supreme Council of the Magistracy of Cambodia also appointed the following national judges, co-investigating judges and co-prosecutors from among serving Cambodian judges and prosecutors: Nil Non, Thou Mony and Ya Sokhan as Trial Chamber judges, with You Ottara serving as reserve; Kong Srim, Som Sereyvuth, Sin Rith and Ya Narin to the Supreme Court Chamber, with Mong Monichariya acting as reserve; Prak Kimsan, Ney Thol and Huot Vuthy to the Pre-Trial Chamber, with Pen Pichsaly acting as reserve; You Bunleng as Co-Investigating Judge, with Thong Ol acting as reserve; and Chea Leang as Co-Prosecutor, with Chuon Sun Leng acting as reserve.

20. On 3 July 2006, the above national and international judicial officers were sworn in during a ceremony held at the Royal Palace in Phnom Penh, which was presided over by the Minister of the Royal Palace of the Royal Government of Cambodia, and the Legal Counsel and Under-Secretary-General for Legal Affairs of the United Nations.

21. A Royal Decree was issued on 9 August 2007 appointing Co-Investigating Judge You Bunleng as President of the Cambodian Court of Appeal. The United Nations expressed its concern over the effect that implementation of the decree would have on the efficiency of the proceedings currently before the court. It also expressed its concern about the impact of the Royal Decree on the perceived independence of the Extraordinary Chambers. The United Nations has accordingly invited the Cambodian authorities to consider keeping Judge You Bunleng in his current function as Co-Investigative Judge of the Extraordinary Chambers in the Courts of Cambodia.

IV. Judicial organization

22. The judges and Co-Investigating Judge as well as the co-prosecutors, the head of the Defence Support Section and the Director and Deputy Director of the Office of Administration used the occasion of the swearing in of the aforementioned officers to hold a judicial strategic planning and development workshop from 3 to 7 July 2006.

23. At the workshop, the national and international judges concluded that the adoption of internal rules of procedure was required before the judicial process could commence. Two committees were formed, namely, the Rules and Procedures Committee and the Judicial Administration Committee. The former was tasked with drafting the internal rules of procedure and any other subsidiary rules, while the latter was tasked with liaising with the Office of Administration to ensure that judicial requirements were adequately addressed. The work of drafting and adopting the internal rules is addressed in section IX below.

V. Establishment of the Office of the Co-Prosecutors

24. Immediately following the workshop, the Office of the Co-Prosecutors became operational and prepared standard operating procedures to allow the Office to conduct preliminary investigations while the internal rules of procedure were being developed. The co-prosecutors collected over 450,000 pages of documentary evidence and deployed electronic systems to assist them in managing and analysing this evidence. The preliminary analysis of the evidence enabled the Office of the Co-Prosecutors to identify crime bases, events and suspects.

25. The co-prosecutors concluded that in order to ensure that prosecutions would proceed on a secure legal footing, it would not be possible to file an introductory submission with the co-investigating judges until after the adoption of the internal rules. While waiting for this to occur, they broadened their preliminary investigations to include additional facts and suspects, which may lead to additional submissions being filed.

26. On 18 July 2007, the co-prosecutors filed the first introductory submission with the Office of the Co-Investigating Judges. In a press release, they stated that preliminary investigations had identified and submitted for judicial investigation 25 distinct factual situations of murder, torture, forcible transfer, unlawful detention, forced labour, and religious, political and ethnic persecution as evidence of crimes committed in the execution of a common criminal plan. Those acts had resulted in the systematic and unlawful denial of the basic rights of the Cambodian population and the targeted persecution of specific groups.

27. The co-prosecutors also announced that their preliminary investigation had resulted in the identification of five suspects who bore primary responsibility for or who had committed, aided, abetted those crimes. The co-prosecutors provided the identities of the suspects to the co-investigating judges and requested that they proceed in accordance with the law. This may now include the arrest and detention of those suspects.

VI. Establishment of the Office of the Co-Investigating Judges

28. The co-investigating judges took up their functions in September 2006, when their Office became operational. As noted in paragraph 25 above, however, the co-prosecutors did not consider it appropriate for the co-investigating judges to begin judicial investigations until internal rules of procedure had been adopted. Both the national and international co-investigating judges were appointed members

of the Rules and Procedures Committee tasked with drafting such rules, and they were thus occupied mainly with this task during the reporting period.

29. The Office of the Co-Investigating Judges prepared itself for the commencement of judicial investigations by developing an investigation and analysis strategy and by providing training for both its national and international staff on substantive legal matters. Training on investigation techniques was also provided for national judicial police officers nominated by the Royal Government of Cambodia to assist the Extraordinary Chambers. With the filing of the introductory submission, the Office of the Co-Investigating Judges is now conducting its first judicial investigation.

VII. Establishment of the Defence Support Section

30. The head of the Defence Support Section took up his duties in October 2006. Soon thereafter, the national judges of the Extraordinary Chambers, the Director of the Office of Administration and the Royal Government of Cambodia queried the scope and staffing of the Section, and questioned its necessity, noting that it was the role of the Bar Association of the Kingdom of Cambodia to defend the interests of the accused before Cambodian courts, of which the Extraordinary Chambers was one.

31. Despite those issues, the Defence Support Section has been able to conduct legal research and analysis on a number of matters likely to be faced by the Extraordinary Chambers. The Section has also prepared a list of authorized counsel to appear before the Extraordinary Chambers and has completed the legal assistance scheme that will be used to reimburse lawyers representing indigent accused, as foreseen by article 17 (c) of the Agreement. The Section organized training courses on international criminal law with the Bar Association of the Kingdom of Cambodia and the International Bar Association with 90 Cambodian lawyers attending. The Section is also recruiting lawyers to apply for inclusion in the list and is conducting outreach activities that emphasize the importance of the rights of the accused in a fair trial.

VIII. Adoption of internal rules

32. Article 12.1 of the Agreement states that the Extraordinary Chambers shall apply Cambodian procedural law, except where there is a gap in such law or where there is an uncertainty or an inconsistency with international standards. In order to prevent an ad hoc approach to identifying gaps, uncertainties and inconsistencies with international standards and to provide clarity to applicable procedures, the judges decided to draft and adopt internal rules for the Extraordinary Chambers that would review Cambodian procedures and modify them where necessary.

33. The Rules and Procedures Committee, comprised of three national judges and two international judges, began drafting the internal rules of procedure in September 2006. A first draft was ready by mid-October 2006, and a plenary session to adopt the internal rules was held in November 2006, in Phnom Penh. The plenary failed to adopt the internal rules at that time, with the national and international judges

disagreeing, inter alia, over the role of the defence and the right of foreign lawyers to appear before the Extraordinary Chambers.

34. In order to move the process forward, the plenary created the Review Committee, comprised of the same judges as the Rules and Procedures Committee with the addition of two international and two national judges. The Review Committee was tasked with identifying the contentious issues in the draft internal rules and resolving them. Once a consensus was reached on a new draft of the internal rules, another plenary session could be called to adopt them.

35. The Review Committee held full meetings in January and March of 2007 in Phnom Penh, with those members of the Committee resident in Phnom Penh meeting on a weekly basis throughout that period. The international judges met in Bangkok for a preliminary meeting in February 2007 to discuss progress made. At the end of the March 2007 meeting, all contentious points on the internal rules had been resolved, except for the set of rules dealing with the defence.

36. Some agreement had been reached in respect of the rules dealing with the defence, but this was conditional upon the agreement of the Bar Association of the Kingdom of Cambodia to reduce the fees it was proposing to charge foreign lawyers who wished to appear before the Extraordinary Chambers. The international members of the Committee felt that the proposed fee amounted to an entry barrier for foreign lawyers, thereby denying the accused their full right to have counsel of choice in accordance with article 14 of the International Covenant of Civil and Political Rights.

37. On 27 April 2007, the Bar Association of the Kingdom of Cambodia agreed to lower its fees to a level deemed acceptable by the international members of the Review Committee, who noted that there was now agreement over the draft internal rules. On 12 June 2007, in a plenary session, the Extraordinary Chambers voted in favour of adopting the internal rules, which came into force 10 days later.

IX. Additional requirements

38. Notwithstanding the positive support and assistance of all partners, mobilization of further resources will be required during 2007. Delays in the adoption of the internal rules mean that the proposed timescale of three years for the Extraordinary Chambers has proven to be too optimistic and will need to be revised. It has also become evident that the original funding estimates for both the United Nations and the Government of Cambodia will not be sufficient to meet the court's requirements, as originally planned in 2004. In addition, funds were spent on unforeseen activities, notably convening the rules committee and the plenary sessions. A summary of expenditure as at 30 June 2007 is set out in the annex to the present report.

Revised timeline

39. It will be recalled that the original budget estimate for the Extraordinary Chambers anticipated that prosecution work would begin after a set-up and training period of three months. This was to be followed by an investigation phase beginning in month 6 of the first year and concluding in month 6 of the third year. The trial

phase of the court was to be held from month 6 to month 10 of the third year, with the appeal process scheduled to take place in the last two months of the same year.

40. The estimate, however, did not take into account the time actually taken to adopt the internal rules of the Extraordinary Chambers. Although the Office of the Co-Prosecutors began operations in July 2006, further progress according to the original timeline was delayed until June 2007 because of the need to create and adopt those rules. As a result, the investigation phase of the court did not begin until July 2007. At this stage, it is expected that the court would complete its work by 31 December 2009, barring any unforeseen circumstances which might result in an extended timeline.

Resource gaps

41. In addition to having an impact on the court's timeline, the internal rules also highlighted resource needs not considered in the original budget estimate. Such needs include, but are not limited to, a significant increase in the number of judicial meetings required each year, the establishment of a victims unit, the expanded role of the Pre-Trial chamber with judicial and administrative support requirements, transcription of all hearings, the presence of a reserve judge at all hearings and the expanded membership of the Rules and Procedures Committee.

42. Further funding gaps have also been identified in the original budget estimate which, if not addressed, will bring into question the ability of the court to carry out its mandate. Areas requiring further budgetary support include, but are not limited to, translation and interpretation; witnesses support; court management; and investigation; and legal research and analysis; case management; close protection; and public affairs.

43. Preliminary estimates indicate that a further $25 million will be needed to fund the United Nations share of the Extraordinary Chambers until 31 December 2009. The amount of $16.7 million represents staff and related costs, while the remaining $8.3 million represents operational costs, equipment, supplies and materials and programme support. A comprehensive review of all the additional requirements will be undertaken before the launch of a fund-raising campaign in the last quarter of 2007.

X. Conclusions

44. I am pleased with much of the progress achieved by the Extraordinary Chambers since the last report. The opening of the Offices of the Co-Prosecutors and Co-Investigating Judges, the establishment of the Defence Support Section, the commencement of investigative work, the adoption of the court's internal rules and the completion of the court's first introductory submission reflect the strong commitment of the Extraordinary Chambers to the judicial process.

45. However, it is recognized that the unique structure of the Extraordinary Chambers has led to challenges for both the administrative and judicial sides of the court. Significant shortfalls in staffing and the budget have been identified, and the original timeline for the court has proven unrealistic.

46. The Office of Administration of the Extraordinary Chambers intends to conduct a comprehensive review of all additional requirements and undertake a

fund-raising campaign on the basis of the review. It will be recalled that the United Nations established a trust fund to support the Extraordinary Chambers in fulfilling its important and historic mandate.

XI. Actions to be taken by the General Assembly

47. **The General Assembly may wish to take note of the present progress report and encourage the Secretary-General to continue providing essential substantive and logistical support to the Extraordinary Chambers.**

Annex

Update of expenditure of United Nations funds for the Khmer Rouge trials as at 30 June 2007

(In thousands of United States dollars)

	Total funding[a]	*Expenditure as at 30/6/07*[b]
Posts	24 007.0	8 139.5
Non-staff compensation	2 387.4	369.3
Other staff costs	1 454.7	364.6
Consultants and experts	550.5	157.1
Witness costs	111.1	0.1
Travel of staff	226.7	310.8
Contractual services	7 043.3	50.7
Training	246.7	208.1
General operating expenses	2 012.7	374.7
Supplies and materials	904.1	188.7
Furniture and equipment	4 104.8	2 582.3
Total	**43 049.0**	**12 745.8**

[a] For the period 29 April 2005 to 30 April 2008.
[b] For the period 29 April 2005 to 30 June 2007.